DECLARATION OF CONDOMINIUM OF
BAYSIDE LUXURY GARAGE CONDOMINIUMS

THIS DECLARATION, made this ____ day of _____, 2025, by GUTIERREZ, LLC a Mississippi limited liability company, (the **"Declarant"**), as Owner of the Property on which the subject Condominium Development is being constructed, for itself, its successors, grantees and assigns.

RECITALS

WHEREAS, Declarant is the fee simple owner of certain Real Property located in the City of Biloxi, County of Harrison, State of Mississippi, more particularly described in Exhibit "A" attached hereto (the **"Real Property"**).

WHEREAS, Pursuant to the provisions of the Mississippi Condominium Law, Miss. Code Ann. Sections 89-9-1 et seq., the Declarant is developing upon the Real Property sixty-three (63) commercial luxury garage condominium units contained in a single building and the appurtenant Common Elements as described in the Declaration. Each unit is reflected in the Plat (defined below) attached to this Declaration and is constructed in the dimensions reflected in the Plat and Plans (defined below). It is the desire and intention of the Declarant to create Units and to sell and convey the Units to purchasers, subject to the covenants, restrictions and conditions herein reserved to be kept and observed.

NOW, THEREFORE, the Declarant does hereby declare that all of the Real Property described in Exhibit "A" hereto is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in the furtherance of the plan for the improvement of the Real Property and a division thereof into Units, and shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person acquiring or owning an interest in the Real Property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, the Declarant hereby makes the following Declaration.

I. DEFINITIONS.

The terms used in this Declaration and in the By-Laws shall have the meanings stated in the Mississippi Condominium Law, Miss. Code Ann. §§89-9-1 et seq., and as follows, unless the context otherwise requires:

A. "Act" means the Mississippi Condominium Law, Miss. Code Ann. Sections 89-9-1 et seq. "Articles" means the Articles of Incorporation of the Association, recorded in the Office of the Mississippi Secretary of State, Harrison, Mississippi.

B. "Assessment" means proportionate share of the funds required for the payment of the Common Elements which from time to time may be levied against each Unit Owner.

C. "Association" means BAYSIDE LUXURY GARAGE CONDOMINIUM ASSOCIATION, a Mississippi not for profit corporation, and its successors, and is a corporation organized under the Act and the Mississippi Nonprofit Corporation Act, Miss. Code Ann. Sections 79-11-101 et seq.

D. "Board" means the Board of Directors of the Association.

E. "Building" means all structures or structural improvements located on the Real Property and forming part of the Condominium.

F. "By-Laws" means the duly adopted By-Laws of the Association, identified as Exhibit "E" attached hereto and made a part hereof as if set out fully herein.

G. "Common Elements" means all portions of the Condominium other than the Units.

H. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

I. "Common Surplus" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.

J. "Condominium" means BAYSIDE LUXURY GARAGE CONDOMINIUMS and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.

K. "Condominium Documents" means this Declaration, the By-Laws, Articles of Incorporation, and all rules and regulations adopted by the Association and all exhibits attached thereto as the same may be amended from time to time.

L. "Condominium Property" or "Property" means all Property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all buildings and other improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal Property now or hereafter used in connection therewith.

M. "Declaration" means this Declaration of Condominium, exhibits hereto, and any amendments thereto which may be made from time to time.

N. "Declarant" means GUTIERREZ, LLC, a Mississippi limited liability company, and its successors and assigns.

O. "Development" shall have the same meaning as "Condominium Property" or "Property," and such other rights.

P. "Development Rights" shall mean the rights of the Declarant to improve or cause the improvement of the Condominium Property.

Q. "Member" means a Member of the Association, membership in which is confined to Unit Owners.

R. "Mortgagee" means any lender holding a mortgage or vendor's lien on any part or all of the Condominium Property.

S. "Occupant" means a person or Persons in possession of a Unit, regardless of whether that person is the Unit Owner.

T. "Persons" means a natural person, a corporation, a limited liability company, a partnership, a limited partnership, the Association, a Trustee, or other legal entity.

U. "Plans" mean the site plan, diagrammatic floor plans of the buildings built or to be built in sufficient detail to identify each unit, its relative location and approximate dimensions, and elevations of the Condominium Property prepared by an independent registered engineer or registered architect, which are collectively marked Exhibit "B" and attached hereto and expressly made a part hereof as though fully set out herein. Marked as Exhibit "C" and attached hereto is a proposed certificate of the Declarant and its lender consenting to the recordation of the Plans pursuant to the Act, and including a surveyor's certificate as to the accuracy of a map of the Real Property and other related certificates.

V. “Plat” means the Plat for the Condominium recorded with this Declaration as Exhibit X, showing the perimeter boundaries of the Property, the location of the Buildings in relation to the Property boundaries, and the perimeter boundaries of the Units within each Building, and any replat of or amendment to the Plat made in accordance with this Declaration.

W. "Private Element" shall mean a Condominium Unit, together with the undivided shares in Common Elements appurtenant to that Unit.

X. "Real Property" means that portion of Real Property described at Exhibit "A" which is to be utilized for the Condominiums, together with the buildings and other improvements thereon which by law are considered as being a part of the Real Property, all of which is submitted lo the Condominium form of ownership as provided for herein.

Y. "Special Declarant Rights" shall mean the rights of the Declarant as is defined in the Act and as set out in the Declaration.

Z. "Unit" shall mean a platted unit in the Condominium Property, together with the Private Elements appurtenant to that Unit.

AA. "Unit Owner" means the Owner of a Unit.

BB. "Utility Services" shall include but not be limited to electrical power, cable and internet, gas, garbage and sewage disposal.

CC. When the context permits, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

II. NAME.

The name by which this Condominium is to be known is BAYSIDE LUXURY GARAGE CONDOMINIUMS. The Condominiums are located in the City of Biloxi, Harrison County, Mississippi.

III. THE REAL PROPERTY.

The Real Property owned by the Declarant which is herewith submitted to the condominium form of ownership the parcel(s) of Real Property described in Exhibit "A" attached hereto, lying and being in Biloxi, Harrison County, Mississippi:

The Real Property is submitted to the condominium form of ownership subject to the following:

A. Zoning, planning, and other restrictions or regulations upon the use of the Real Property as may be imposed by the City of Biloxi, Mississippi, Harrison County, Mississippi, or any other governmental authorities having jurisdiction over the Real Property;

B. Development Rights and Special Declarant Rights granted Declarant by the Condominium Documents and by the Act;

C. County, city and state ad valorem taxes for the year of 2025, which become due and payable on December 31, 2025, but will not be in default until February 1, 2026;

D. The rights of eminent domain and other governmental rights of police power;

E. Public utility easements, other easements and uses of the subject property not visible from the surface, or easements or claims of easements, not shown by the public records;

F. Encroachments, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and inspection of the Real Property;

G. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records;

H. Terms and conditions of all permits and licenses of federal, state, and local government. including applicable agencies and departments and private and quasi-governmental agencies having jurisdiction over the Real Property;

I. Local, county, state or federal governmental law or regulation relative to the environment, zoning, subdivision, occupancy, use, construction or development of the

above-described property, including the subdivision regulations of Harrison County, Mississippi, and Biloxi, Mississippi, and any unrecorded restrictive covenants;

J. The terms, conditions, covenants and restrictions contained herein;

K. Any and all leases, exceptions, reservations and/or conveyances, together with release of damages, of or related to oil, gas and/or other minerals of every kind and character, all other minerals which may be produced in connection with oil and gas including Sulphur and any other gases or elements, all salt domes, carbon dioxide, and/or any geothermal energy resources, and any and all right related or pertaining to any of the foregoing in, on, and under the subject property, this opinion does not include the mineral estate;

L. Security interests that may have attached to: fixtures on the above-described property; personal property taxes, if any; and

M. Any liability or loss due to environmental contamination by past uses of the above described property as a toxic hazardous waste site or due to violation of environmental protection law of any governmental body.

IV. **PURPOSE.** The Declarant hereby submits the Real Property described above, together with all improvements, Buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the condominium form of ownership and use in the manner provided for by the Act.

V. DEVELOPMENT PLAN.

A. **Plan.** This Declaration of Condominium is effective upon the recordation hereof in the land records maintained in the Office of the Chancery Clerk of Harrison County, Mississippi.

B. **Amendment.** This Declaration may be amended by the Declarant without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act. In addition to any other method of amending this Declaration provided for elsewhere herein, Declarant reserves the right and power to record a special amendment (**"Special Amendment"**) to this Declaration at any time and from time to time which amends this Declaration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Mississippi Condominium Act, (iv) to correct clerical or typographical errors in this

Declaration or any exhibit or any amendment thereto, or (v) to make any other non-material change in this Declaration or any exhibit hereto or any amendment thereto. In furtherance of the foregoing, an irrevocable power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner, Mortgagee or other Lienholder. Anything else to the contrary notwithstanding, in compliance with Federal National Mortgage Association (FNMA) guidelines, amendments of a material nature must be approved by at least the Owners of seventy percent (70%) of the Units, and by Mortgagees who represent at least fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees. Where this Declaration requires approval binding upon Mortgagees, implied approval, including implied written approval, binding upon a Mortgagee may be assumed when said Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after said Mortgagee receives notice of the proposal delivered by certified or registered mail, with a return receipt requested.

C. **Agreement.** Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit which shall be located on the Real Property subject to this Declaration or any portion thereof shall be deemed, by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to have agreed and consented, within the meaning of this Declaration and of the Act to be bound by the terms and provisions hereof and to have further agreed and consented that any amendment to this Declaration executed by the Declarant alone pursuant hereto shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit Owners in the Common Elements may be changed thereby.

D. **Easements.** Easements are reserved to the Declarant throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising any Development Rights or Special Declarant Rights. In addition, each of the following easements are reserved to the Association for the benefit of the Unit Owners, their guests and lessees and each shall be a covenant running with the Real Property:

E. **Utilities and Drainage, Inspections and Maintenance Access.** Easements are reserved throughout the Condominium Property as may be required for Utility Services and drainage in order to adequately serve the Condominium. Each Unit shall have an easement as may be required to drain the Condominium Property adequately. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom, to maintain, repair or replace the Common Elements contained therein or elsewhere on the Condominium Property, and to control or stop events (such as but not limited to uncontrolled water leakage, fire, acts or omissions

constituting waste, intentional or reckless destruction or neglect of property, or other) that pose an immediate risk of bodily harm, death, or significant property damage or destruction (collectively, "**Emergency**"); provided such right of access, except in the event of an Emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of Emergency, entries shall not be made without prior notice to the Unit Owner. Owners shall entrust a unit key to the Association, failing which the Association may enter (following prior notice except in an Emergency) using such force as is necessary and without liability for resulting damage, if any.

F. **Encroachments.** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any Building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such Building stands. In the event any Building, any Unit, any adjoining Unit, or any adjoining Common Element shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Building or Buildings shall stand.

G. **Support.** Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all other Units, and the Common Elements.

H. **Access.** Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, walkways and lanes, and light passageways, as the same may from time to time exist in the Common Elements; and for ingress and egress over, through and across such portions of the Common Elements as may from time to time be maintained and intended for such purposes. This easement shall be non-exclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans. In the event that one or more additional phases are made subject to this Declaration, any Unit Owner in any phase shall have access to the Common Elements of all phases, together with the rights of ingress and egress as described herein.

I. **Ingress and Egress Easement.** Each Unit Owner of the Condominium shall have a non-exclusive easement for ingress and egress between said Unit and the public roads and streets serving the Condominium, over the halls, corridors, stairs, walks, driveways, parking areas, exterior access and other portions of the Common Elements of the Condominium. In the case of Commercial Units and subject to reasonable regulation pursuant to the rules and regulations of the Association as they may be amended from time to time, this easement shall extend to Members of the general public for purposes of partaking of the goods and services provided by business entities occupying the

Commercial Units.

J. **Units (Private Elements).** Each Unit is assigned a number or letter or a combination thereof, which is indicated on the Plans so that no Unit bears the same designation as any other Unit. The legal description of each Unit shall consist of the identifying number or letter or a combination thereof as shown on the Plans, the name of the Condominium, the name of the City and County in which the Unit is situated, the name of the office in which this Declaration is recorded, and the Instrument Number under which this Declaration is recorded. The description and location of the particular Units and the appurtenances are determined with the aid of the Plans. The Unit boundaries are determined as follows:

K. **Boundaries (Planes).** The boundaries of each Unit are as follows: The lower boundary is the horizontal plane at the top of the concrete floor within the Unit; and the upper boundary is the horizontal plane at the bottom surface of the wallboard of the ceiling of the Unit, or if there is no wallboard, the horizontal plane that is consistent with the lowest structural element of the roof and ceiling; and the lateral boundaries are the planes located on each side of a Unit, as shown on the Plat, perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit. The lateral boundaries of each Unit are located as shown on the Plat and the Plan, as if Demising Walls are constructed within each General Common Element Space bounding the Unit. Included within each Unit shall be the airspace and all other fixtures and improvements lying within the boundaries of such Unit. As such, the boundary of each Unit shall be measured to the applicable lateral, upper and lower planes of the Unit. All portions of the Demising Walls located within the General Common Element Space between two adjacent Units, and all portions of floors below the lower boundary and of the ceiling above the top boundary of the Unit are part of the Common Elements.

L. **General Description of Units.** The Condominium Property consists Units shall be used exclusively for non-residential purposes, including vehicle, motor-sports and other business storage. Each Unit constitutes a separate parcel of real estate. The Unit identifiers and locations of the Units are as shown on the Plat.

M. **Unit Ownership.** Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit Owner shall have the unrestricted right of ingress and egress to his Unit, which right shall be an appurtenance to his Unit. The Private Elements of each Unit shall consist of the interior components.

N. **Changes.** The Declarant reserves the right to change the interior design and

arrangement of any or all Units owned by it. The Declarant further reserves the right to alter the boundaries between Units, which said change shall be reflected by an amendment of this Declaration, which may be executed by the Declarant alone, notwithstanding the procedures for amendment described herein. However, no such change of boundaries shall increase the number of Units, nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described herein. If the boundaries of more than one (1) Unit are altered, the Declarant shall appropriately reapportion the shares of the Common Elements which are allocated to the altered Units. No assurance is made concerning whether or not any Unit will be or will not be changed by the Declarant nor is any assurance made concerning the nature, character, or quality of said change. The exercise by the Declarant of the Special Development Right to change a Unit does not obligate the Declarant to exercise said right in any one or all of any other Unit in the Condominium.

O. **Common Elements.** Any right, title or interest in a Unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto its respective undivided share of the Common Elements and a right to use the Common Elements in conjunction with the other Unit Owners. The Common Elements of the Condominium are all portions of the Condominium other than the Units and will include the Common Areas and facilities located substantially as shown on the Plans. Such Common Areas and facilities will include the following:

i. All of the Real Property described in the legal description.

ii. All improvements and parts of the Real Property which are not a Unit or Private Element.

iii. All driveways and other means of ingress and egress.

iv. The systems and installations providing service to a Building, or to any Unit, such as electrical power, gas and water, sanitary and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires, and all other apparatus and installations in connection therewith, whether located in the Common Elements or in the Units, except when situated entirely within a Unit for service only of that Unit including systems dedicated to a particular Unit and servicing the same.

v. All tangible personal Property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners.

vi. Recreation areas.

vii. Lawn areas, landscaping, walkways, and sidewalks.

viii. All area outdoor and exterior lights not metered to individual Units and supports and all entrance and related type signs.

ix. All other parts of the Condominium Property existing for the common use,

including recreational areas and facilities supporting the 'man cave' concept, or necessity of the existence, maintenance, and safety of the Condominium.

x. All other items listed as such in the Act.

VI. COMMON ELEMENTS, ASSESSMENTS.

A. **Ownership.** A schedule setting forth the percentage of undivided interest of each Unit in the Common Elements is attached hereto, marked Exhibit "G" and by reference made a part hereof. The percentage of undivided interest of each Unit in the Common Elements is determined by dividing the total number of square feet of interior area of each Unit by the total number of square, feet of interior area in all Units. For purposes of percentage of ownership in the Common Elements, percentage of Common Expenses, and percentage of Common Surplus, and voting on all matters requiring Action by the Owners, the percentages as set out on Exhibit "G" shall govern. The ownership interest in the Common Elements shall be an undivided interest, and except as provided in the Act and this Declaration shall remain undivided. No Unit Owner shall bring any Action for partition or division of the Common Elements. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. Upon the incorporation of any one or more additional phases into the Condominium by incremental increase as elsewhere provided, the percentage of undivided interest of each Unit in the Common Elements shall be redetermined in accordance with this formula.

B. **Use.** Each Unit Owner shall have the right to use the Common Elements. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, Condominium Documents, and the Rules and Regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions. or grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.

C. **Share of Common Expenses.** Each Unit Owner shall be assessed and is individually liable for a proportionate share of the Common Expenses and the proportionate share of the Common Expenses shall be the same ratio as the Unit Owner's percentage ownership in the Common Elements, as the case may be. Payment of Common Expenses shall be in such amounts and at such times as determined in the By-Laws. Assessments shall be collected by the Association on a monthly basis. No Unit Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or nonuse or non-enjoyment of the Common Elements, or by abandonment of his Unit. Common Expenses shall include but shall not necessarily be limited to expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve accounts. Notwithstanding anything contained herein to the contrary, the Board may charge an extraordinary use fee for each Unit.

D. **Late Payment of Assessments, Fines.** All Assessments, and installments thereon, paid on or before fifteen (15) days after the date when due shall bear no interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the Board, but not to exceed to the maximum legal rate, together with all expenses, including Attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payment upon account shall be first applied to such late charges, penalties, interests and other costs and expenses, including Attorney's fees, and then to the Assessment payment due. Also, the Association may, in the manner provided for in the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-Laws, and rules and regulations of the Association.

E. **Liens for Assessments.** The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure and does secure the moneys due for all Assessments and fines now or hereafter levied or subject to being levied against the Unit Owner. This lien shall also secure such late charges, penalties and interest, if any, which may be due on the amount of any delinquent Assessment owing to the Association, and shall also secure all costs and expenses, including a reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements. Perfection of any lien provided hereunder shall be in accordance with the laws of the State of Mississippi.

F. **Priority of Lien.** The Association shall have a lien for nonpayment of Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Unit Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Unit Owner. The rental required to be paid shall be equal to the rental charged on comparable types of dwelling Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board of the Association but in no case shall said interest exceed the maximum legal rate on any such advances made for such purposes. All Persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit. or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to

such sale or transfer; provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six months immediately preceding the institution of an Action to enforce the lien. However, any such delinquent Assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Units as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter.

G. **Disposition of Surplus.** Each Unit shall carry with it a proportionate share of Common Surplus, as the case may be, and the proportionate share of Common Surplus shall be the same ratio as that Unit Owner's percentage ownership of the Common Elements; or in the alternative, such surplus or any portion thereof may be added to a reserve fund for maintenance, repair, and replacement of the Common Elements, at the sole discretion of the Association.

H. **Declarant's Assessments.** Notwithstanding any provisions of this Declaration, the Declarant, as owner of Units within the Condominium, shall not be responsible for or obligated to pay assessments toward the expenses of the administration, maintenance and repair of the Common Elements, contributions to capital reserves or the operation of the Association, for any such Unit until the date on which substantial completion of the Unit has been certified by the Project architect/designer, confirmed by the issuance of a certificate of occupancy for the Unit, except that the Declarant shall be responsible for the pro rata portion of any insurance premiums attributable to such Units. Upon the receipt by Declarant of a certificate of occupancy for any such Unit, the Association shall be notified upon the date of receipt by Declarant so that the Unit can be added to the assessments as of the date of issuance of the certificate of occupancy. Except for its responsibilities as a Unit Owner as provided herein, Declarant shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Elements completed and turned over to the Association for use. The Association shall receive notice from Declarant upon the completion of any of the Common Elements, once Declarant has received verbal confirmation of completion from the Project architect/ designer. The Declarant shall be entitled to credit against any Common Expenses it owes any sums it has advanced in future assessments for any advance payment of Common Expenses occurring from and after the date of recording of this Declaration.

VII. THE ASSOCIATION, AND ASSOCIATION OBLIGATIONS WITH RESPECT TO CONSTRUCTION AND MAINTENANCE ISSUES, CERTAIN PRE-DISPUTE RESOLUTION REQUIREMENTS

A. **Powers and Duties.** The operation and administration of the Condominium

shall be by the Association of the Unit Owners, pursuant to the provisions of the Act. The Association shall be a not for profit Mississippi corporation incorporated by Articles of Incorporation recorded in the office of the Secretary of State of the State of Mississippi. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non exercise of its powers. The Association shall have exclusive authority and power to maintain a class Action and to settle a cause of Action on behalf of Unit Owners of the Condominium with reference to the Common Elements and electrical and plumbing elements serving an improvement or a Building as distinguished from mechanical elements serving only a Unit; and with reference to any and all other matters in which all the Unit Owners have a common interest. The Association shall have all the powers and duties set forth in the Act and the Mississippi Nonprofit Corporation Act, as well as all the powers and duties granted to or imposed on it under the By-Laws and other Condominium Documents as they may be amended from time to time. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other Person or Persons. The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to undertake other actions reasonably necessary for the proper maintenance and operation of the Development and further, shall have the right to grant permits, licenses, and easements over the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development. The Board shall have the authority and duty to levy and enforce the collection of general and specific Assessments for Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

B. **Name.** The name of the Association shall be BAYSIDE LUXURY GARAGE CONDOMINIUM ASSOCIATION.

C. **Members.** Each Unit Owner (including all fractional owners of a single Unit) shall be a Member of the Association. A Unit Owner's Membership shall immediately terminate when he ceases to be a Unit Owner. The Membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

D. **Voting Rights.** Each Unit shall be entitled to one (1) vote, which vote is not divisible. In the event a Unit is owned by multiple owners (*i.e.* fractional ownership), the Unit will nevertheless possess a single vote. The vote for a Unit shall be cast by the Owner thereof in the manner provided for herein and in the By-Laws.

E. **Designation of Voting Representative.** In the event a Unit is owned by one (1) Person, his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) Person, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership,

limited liability company or limited partnership, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary or assistant secretary of the corporation (in the case of a corporation) or by the general partner or partners if more than one (in the case of a partnership or limited partnership), which certificate shall be filed with the Secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than (1) Person or by a corporation, partnership or limited partnership, the Membership or vote of the Unit concerned may be cast in accordance with the Act. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit occurs. A certificate designating the Person entitled to cast the vote of a Unit may·be revoked by any Owner thereof.

F. **Restraint Upon Assignment of Shares in Assets.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Unit.

G. **Board of Directors.** The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than five (5) as shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members.

H. **Indemnification.** Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees reasonably incurred by or imposed upon him/her in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performed of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

I. **Limitation of Liability.** Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association or caused by the elements, or by other Owners or Persons.

J. **By-Laws.** The Association and its Members shall be governed by the By-Laws, which shall be adopted at the initial meeting of the Association.

K. **Proviso.** Subject to the provisions herein, until the earliest of (i) sixty (60)

days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant; (ii) two (2) years after the Declarant, its successors or assigns have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new Units was last exercised, the By-Laws and rules adopted by the Declarant shall govern and the Declarant shall have the exclusive right to appoint, remove, and designate the officers and Members of the Board of Directors, and neither the Unit Owners nor the Association nor the use of the Condominium Property by Unit Occupants shall interfere with the completion of the contemplated improvements and the sale of the Units. The Declarant may voluntarily surrender the right to appoint and remove officers and Members of the Board; but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified Actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than the Declarant, at least one (1) Member and not less than twenty-five percent (25%) of the Members of the Board must be elected by Unit Owners other than the Declarant. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the Members of the Board must be elected by Unit Owners other than the Declarant. Except as provided for in the Act, not later than the termination of any period of Declarant control, the Unit Owners shall elect a Board of at least three (3) Members, at least a majority of whom must be Unit Owners other than the Declarant. The Declarant may make such use of the unsold Units, Commercial Units and of the Common Areas and facilities as may facilitate such completion and sale, including but not limited to showing of the Property and the display of signs until the sales of all Units is completed. The Declarant may maintain sales offices, sundry management offices, leasing and operations offices. and models in any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management offices, leasing and operations offices, and models. The Declarant shall have the absolute right to rent or lease unsold Declarant-owned Units subject to any duly adopted requirements imposed by the Association and which are applicable to all other Owners and Units. The Declarant shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Unit location to another or from one area of the Common Elements to another area of the Common Elements in the Condominium. The Declarant may maintain signs on the Common Elements advertising the Condominium.

L. **Contracts.** If entered into before the Board elected by the Unit Owners takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities and any other contract or lease between the Association and the Declarant may be terminated without penalty and upon not less than ninety (90) days'

notice to the other party by the Association at any time after the Board elected by the Unit Owners takes office.

M. **Availability of Records.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first Mortgagees and insurers of first Mortgagees of any Unit, or their authorized agents, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

N. **Maintenance Budgeting and Reserves, Maintenance Manual.** The Association shall establish and maintain an adequate budget and reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements in accordance with the Maintenance Manual prepared by the Declarant, further to include a contingency for repairs and annual inspections of major systems, including the roof, exterior finishes and all glazing. The fund shall be maintained out of regular Assessments for Common Expenses. Declarant assumes no responsibility for any failure of Unit Owners or the Association to perform required maintenance on any portion of the Real Property. The Declarant shall provide the Association with a copy of the Maintenance Manual prepared by the Declarant. The Association shall ensure performance of, at a minimum, all maintenance requirements described in the Maintenance Manual.

O. **Notification of Alleged Defect.** Before the Unit Owners or the Association Board may take any action or make any claim related to a defect discovered in the design or construction of the Condominium Property or any of the Units or Common Elements, the Association Board shall be notified of the defect, if discovered by a Unit Owner, and in either case the Association Board shall notify the Architect and Declarant in writing of the defect and provide the Architect and Declarant no less than thirty days to commence actions to investigate and, if appropriate, cure such defect.

P. **Mediation First.** Any dispute involving one or more Unit Owners, or the Association, for itself or through the Association Board, and the Architect, Declarant, or the contractors, subcontractors, or consultants of any of them shall be first submitted to mediation in accordance with the procedures set forth below, prior to submitting the claim or dispute to binding dispute resolution.

Q. **Owner Approval of Arbitration, Litigation.** The Association must obtain approval of more than two thirds (2/3rds) of all Unit Owners prior to initiating arbitration or litigation against the Declarant, Architect or Contractor.

R. **Retention of Engineer or Architect.** Prior to transfer of the Real Property or units to the Association, the Association shall be required to engage the services of a qualified engineer or architect to inspect the Condominium Property for design defects,

construction defects and code violations. Upon completion of the inspection and subsequent written report, a "2nd punch list" shall be developed to determine an acceptable solution to all parties of each item. Upon completion of the agreed upon solutions, a settlement agreement shall be signed by the Association and the Developer.

VIII. MAINTENANCE

A. **Maintenance by the Association.** The Association is responsible for maintenance, repair, and replacement of the Common Elements, including but not limited to responsibilities enumerated in under Article VII, above.

B. Maintenance by Unit Owner. Each Unit Owner is responsible for the maintenance, repair, and replacement of his Unit. The Association may impose standards for the maintenance of its Unit, and does hereby assign to each Owner such obligation with respect to the garage door, the exterior door and equipment that serves each Unit owned by such Owner. However, if the Owner fails to perform the maintenance to the standards established by the Association, the Association may perform the maintenance and assess the Owner's Unit for the costs.

C. **Alteration and Improvement of the Common Elements.** Except as may be prohibited by the Act, and except as to the Development Rights and Special Declarant Rights provided for in this Declaration, after the completion of the improvements included in the Common Elements, contemplated by this Declaration, there shall be no addition, alteration, change, relocation or further improvement of Common Elements, without prior approval of the Association.

Unit Owner's Covenants. Each Unit Owner covenants and agrees as follows:

i. To perform all maintenance, repairs, and replacements that are the Unit Owner's obligations under this Declaration and the Act.

ii. To pay for all the Unit Owner's utilities, including electricity, gas, and telephone used within the Unit and all taxes levied against the Unit Owner's Unit.

iii. Not to make any addition or alteration to a Unit or to the Common Elements or to do any Act that would impair the structural soundness or safety of any part of the Condominium Property.

iv. To make no alterations, additions, improvements, repairs, replacements, or changes to the Common Elements or to any outside or exterior portion of the Building, specifically including, but not limited to screening or enclosing balconies installing garage or other exterior doors or affixing out shutters to windows, without the prior written consent of the Association.

v. To maintain a tidy and uniform appearance to any balconies or window

treatment visible from the exterior, including preventing clutter from visibility on the balcony, preventing potted or other plants from visibility on the balcony, preventing decoration to the balcony, unless approved by the written consent of the Association.

vi. To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit for the purpose of maintaining, inspecting, repairing, or replacing Common Elements or for repairing, maintaining or replacing any plumbing, heating, ventilation or air conditioning system located within such Unit but serving other parts of the Condominium Property; or to determine, in case of emergency, the circumstances threatening Units or Common Elements and to correct the same or, to determine compliance with the provisions of the Condominium Documents.

vii. To promptly report to the Association any defects or needed repairs for which the Association is responsible, including but not limited to reporting obligations under Article VII, above.

viii. To reimburse the Association for any repairs or replacements which are made necessary because of abuse or negligent use by a Unit Owner of the Condominium Property, the cost of such repair or replacement may be assessed against such Unit Owner.

ix. To comply with all of the obligations, if any, of a Unit Owner under the Act and the Condominium Documents.

x. Contracts for Maintenance. Subject to all requirements herein, the Association may enter into a contract with any firm, Person or corporation, or may join with other entities in contracting for the maintenance and repair of the Condominium Property, and may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association.

xi. Exterior Surface. The Association shall determine the exterior color scheme of the Condominium Property except as may be otherwise provided for herein. No Unit Owner shall paint any exterior surface or add or replace anything thereon or affix thereto without the written consent of the Association.

xii. Maintenance of On-site Drainage Structures. The Association shall be responsible for the perpetual maintenance of the on-site drainage structures as may be required in the Building Plans as approved by the City of Biloxi for the construction of the Building.

IX. **INSURANCE.**

In addition to and not in lieu of insurance requirements set out elsewhere in the

Condominium Documents and in addition to any insurance providing additional coverage to the Declarant, the following terms govern insurance.

A. **Purchase of Insurance.** Commencing not later than the time of the first conveyance of a Unit to a Person other than the Declarant, the Association shall maintain insurance upon the Common Elements to the extent reasonably available, and as provided for in the Act and stated herein. Prepayment of insurance advanced by the Declarant shall be reimbursed on a pro rata basis by each Unit Owner upon the first purchase of a Unit.

B. **Location of Policies.** The Association shall retain the original of all insurance policies in a place of safe keeping such as a safe or a safety deposit box.

C. **Copies to Mortgagees.** One copy of each insurance policy and of all endorsements thereto shall be furnished by the Association to any first Mortgagee requesting a copy.

D. **Authorization to do Business.** All policies of insurance must be issued by companies specifically authorized by the laws of the State of Mississippi and certified by the Insurance Commission of the State of Mississippi to transact such business within the State of Mississippi.

E. **Coverage.** In addition to terms of coverage specified in the By-Laws, the Association shall maintain the following insurance coverage:

i. **Property and Casualty, Master Policy.** The Association shall obtain and maintain a Master Policy that provides certain blanket "all risk" property, casualty and liability insurance coverage. In the event of a loss, the Master Policy will cover the interests of the Association, all Unit Owners and their mortgagees, as their interests may appear, and will include the Common Elements outside the Unit up to the interior of the exterior wall material (not including interior sheet rock walls) for covered perils under the insurance policy. Except as provided in this Article, below, this coverage will not cover the interiors of the Units. Unit Owners should contact an insurance professional for appropriate coverage under an H0-6 policy or the like, to include liability coverage and replacement coverage on furnishings and contents, wall coverings, ceiling coverings, electrical fixtures, floor coverings, water, heater and AC systems, appliances, built-in cabinets and counters, window treatments, additions/renovations/upgrades, and other.

ii. **Liability Insurance.** The Association must obtain, maintain, and pay the premiums upon, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance and covering all the

Common Elements, commercial space owned and leased by the Association, and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. The Association shall review such limits once each year, but in no event shall such insurance be less than One Million and No/100 ($1,000,000.00) Dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than One Million and No/l00ths ($1,000,000.00) Dollars. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for Property damage, bodily injuries and deaths of Persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association. The policy shall also include, if reasonably available, coverage for protection against water damage liability. If required by any first mortgage holder and, if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to Condominiums similar in construction, location and use, including but not limited to host liquor liability, employer's liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance.

iii. **Flood Insurance.** If any part of the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain, and pay the premiums upon, as a Common Expense, a "master" or "blanket" type of flood insurance policy. The policy shall cover the Common Elements falling within the designated flood hazard area. The insurance shall be in an amount deemed appropriate by the Association, but not less than an amount equal to the lesser of:

(a) the actual cash value of the insured Property located within the flood hazard area; or

(b) The maximum coverage available for the Property under the National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government.

iv. **Personnel Coverages.** Should the Association employ personnel, all coverages required by law, including workers compensation, shall be

obtained so as to meet the requirements of the law.

v. **Fidelity Bonds.** The Association shall obtain, if reasonably available, maintain and pay the premiums upon, as a Common Expense, a fidelity bond to protect against loss of money by dishonest acts on the parts of all officers, directors and employees of the Association and all other Persons handling, or responsible for, funds of the Association or funds administered by the Association. Where a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred percent (100%) of the estimated annual Common Expenses. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent The bond shall provide that any first Mortgages shall receive notice of cancellation or modification of the bond.

vi. **Other Insurance.** The Association shall obtain other insurance as may be required, including by its By-Laws, and shall have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

F. **Notice of Unavailability.** If the insurance described above which is required to be maintained is not reasonably available, the Association promptly shall give notice of that fact to be hand delivered or sent prepaid by United States Mail to all Unit Owners.

G. **Individual Insurance.** Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for his own benefit

H. **Provisions.** Insurance coverage, if reasonably available, must comply with the requirements. if any, of the Act and this Declaration and shall in substance and effect:

i. Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy (whether or not requested by

the Association) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Declarant, the Association, the Unit Owner, each holder of a first mortgage on an individual Unit, and every other Person in interest who shall have requested such notice of the insurer.

ii. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Owner or lessee of any Unit.

iii. Contain a standard Mortgagee clause which shall:

(a) Provide that any reference to a Mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named herein; and

(b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any Act or neglect of the Association or Unit Owners or any Persons under any of them; and

(c) Waive any provisions invalidating such Mortgage clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or conveyance, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

I. **Liabilities and Responsibilities of Unit Owner.** A Unit Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of his Unit caused by his conduct. Each Unit Owner shall be responsible for obtaining insurance for his own benefit.

J. **Insurance Premiums.** Insurance premiums for the Master Policy described above shall be paid by the Association as a Common Expense. Should the Association fail to pay such insurance premiums when due, or should the Association fail to comply with other insurance requirements of a Mortgagee, the Mortgagee shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Mortgagee shall be subrogated to the Assessment and the lien rights of the Association as against the individual Unit Owners for the payment of such item of Common Expense.

K. **Shares of Proceeds.** The Association as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares:

i. Common Elements. An undivided share of the proceeds on account of damage to Common Elements shall be held for each Unit Owner, with such share's portion of the total proceeds being the same percentage as the share

of the Common Elements appurtenant to his Unit.

ii. When the Condominium Property is to be restored, the proceeds shall be held for the Unit Owners of damaged Units, with the share of each in the total proceeds being in the proportion that the cost of repairing the damage suffered by such Unit Owner bears to the total cost of repair, which cost shall be determined by the Board.

iii. When the Condominium Property is not to be restored, the proceeds shall be held for the Unit Owners in the undivided shares that are the same as their respective shares in the Common Elements.

L. **Mortgages.** In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of that Unit shall be held in trust for the Mortgagee and the Unit Owner as their interest may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination of whether or not any damaged Property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this Declaration.

M. **Distribution of Proceeds.** Proceeds of insurance policies received by the Association as Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners:

N. **Reconstruction or Repair.** First, if the damage for when the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, with remittances to Unit Owners and Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by and such Mortgagee.

O. **Failure to Reconstruct or Repair.** If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners with remittances to Unit Owners and their Mortgagee being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

X. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. **Determination to Reconstruct or Repair.** Any portion of the Condominium for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

i. The Condominium is terminated in accordance with the Act;

ii. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or

iii. Seventy-five percent (75%) of the Unit Owners, including every Owner of a Unit which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds in reserves is a Common Expense as provided in this Declaration.

B. **Plans.** Any reconstruction or repair must be substantially in accordance with the Plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board and consented to by one hundred percent (100%) of the Unit Owners.

C. **Responsibility.** If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. **Estimate of Cost.** Immediately after a casualty causing damage to the Condominium Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain at least two reliable and detailed estimates of the cost to rebuild or repair.

E. **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Unit by the Association, Assessments shall be made against the Unit Owners who own the damaged Property, and against all Unit Owners in the case of damage to Common Areas and facilities in sufficient amounts to provide funds to pay the estimated costs. If any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Unit, and against all Unit Owners in the case of damage to Common Areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such Assessments against Unit Owners for reconstruction and/or repair of damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such Assessments for reconstruction and/or repair of damage to Common Areas and facilities shall be in proportion to the Owner's share in the Common Elements. Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for Assessments elsewhere herein.

F. **Construction Funds.** The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible, which shall consist of proceeds of insurance held by the Association as Insurance Trustee and funds collected by the Association from Assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner and order:

i. **Disbursement.** The construction fund shall be disbursed in payment of such costs on the order and in the manner provided by the Board of the Association.

ii. **Unit Owner.** If there is a balance of insurance proceeds after the payment of the cost of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to Unit Owners of damaged Units who are responsible for the reconstruction and repair of the damaged portions of their Units. The distribution to each Unit Owner shall be made in the proportion that the estimated costs of reconstruction and repair of such damage to his Unit bears to the total of such estimated costs in all damaged Units. However, no Unit Owner shall be paid an amount in excess of such estimated cost for his Unit. If there is a first Mortgagee, the distribution shall be paid to the Unit Owner and to the first Mortgagee jointly.

iii. **Surplus.** It shall be presumed that the first moneys distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund.

XI. EMINENT DOMAIN

A. **Proceeds.** The taking of a portion of a Unit or of the Common Elements by eminent domain shall be deemed to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the Act and under Reconstruction or Repair after casualty and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association an Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner.

B. **Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of the condemnation awards will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Condominium Property will be reduced and the Property damaged by the taking will be made usable in the manner as provided below. The proceeds of such award

shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after damage to the Common Elements.

C. **Unit Reduced but Useable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made useable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

i. Restoration of Unit. The Unit shall be made usable. If the cost of the restoration exceeds the amount of the award, and the Owner of the Unit does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the Board of Directors, be extended for restoration by the Association and be assessed against the Unit Owner as an Assessment.

ii. Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to any first Mortgagee of a Unit, the remittance being made payable jointly to the Unit Owner and any such first Mortgagee.

iii. Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements, the Common Expenses and the Common Surplus appertaining to the Unit shall be reduced in accordance with the Act.

D. **Unit Made Unusable.** If the taking is of the entire Unit, or so reduces the size of the Unit that it cannot be used practically or lawfully for any purpose permitted by the Declaration, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

i. Payment of Award. The award shall be paid first to any first Mortgagee in an amount sufficient to pay off its mortgage on such Unit; and then jointly to the Unit Owner and other Mortgagees of the Unit in an amount not to exceed the market value of the Condominium parcel immediately prior to the taking as diminished by any sums from the award previously reserved for any first Mortgagee; and the balance, if any, to the repairing and replacing of the Common Elements damaged by the taking.

ii. Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner

elsewhere required in this Declaration for further improvement of the Common Elements.

iii. Adjustment of Shares in Common Elements. Common Expenses. and Common Surplus. The shares in the Common Elements, the Common Expenses, and the Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the other shares among the reduced number of Unit Owners. This adjustment shall be done by restating said share of the continuing Unit Owners as percentages aggregating one hundred percent (100%) so that the shares appurtenant to the Units of the continuing Owners shall be in these proportions to each other as before the adjustment.

E. **Assessments.** If the balance of the award (after payments to the Unit Owner and such Owners' Mortgagees as above provided) for the taking is not sufficient to finance the alteration of the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Unit Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. Such Assessments shall be made in proportion to the shares of those Unit Owners in the Common Elements after the changes affected by the taking.

F. **Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required elsewhere in this Declaration for further improvement of the Common Elements. The balance of the awards for the taking of the Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements, after adjustment of these shares on account of the condemnation, except that if a Condominium parcel is encumbered by a first mortgage, the distribution shall be paid jointly to the Owner and the first Mortgagee of the Condominium parcel.

G. **Conflict with Act.** If there is any conflict between the provisions of this article and the Act, the provisions of the Act shall control.

XII. USE RESTRICTIONS

Each Unit shall be used for the storage of vehicles and boats, as well as for recreational and social purposes, including but not limited to gatherings and entertainment consistent with the 'man cave' concept.

A. Units. Each Unit shall be used for storage. The foregoing restrictions as to

residence, however, shall not be construed in such manner as to prohibit a Unit Owner from:

i. Maintaining his personal professional libraries;

ii. Keeping his personal business or professional records or accounts;

iii. Handling his personal business or professional telephone calls or correspondence; or

iv. using the Unit for a home office, but only so long as such use is (a) clearly incidental and subordinate to the primary garage and recreational use of the Unit, (b) does not change the outside appearance of the unit in any way, (c) involves no signage of any kind, (d) occupies no more than 25% of the total square footage of the Unit, (d) generates no traffic volume beyond that normally expected at a garage and recreational unit, (e) involves no equipment or tools likely to interfere with the quiet enjoyment of units by others, whether by reason of noise, odor, vibration, glare, fumes, electrical interference, or detectable interference with television, wireless, or internet connectivity or reception, or fluctuations in line voltage.

Such uses are declared expressly customarily incidental to the principal use and not in violation of said restrictions.

B. Miscellaneous Restrictions.

i. Nothing shall be stored in or upon the Common Elements without prior consent of the Board except in storage closets or areas or as otherwise herein expressly provided.

ii. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall peon.it anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

iii. No waste shall be committed in or on the Common Elements.

iv. Each Unit Owner shall store such garbage in a trash receptacle in the identified common area dumpster location.

v. No Unit Owner or Occupant shall disturb or annoy other Occupants of the

Condominium Property nor shall any Occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal Act in his Unit or on the Property.

vi. Subject to Development Rights under this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent Acting in accordance with the Board's direction. Provided, however, the Owner of a Condominium Commercial Unit may display a sign adjacent of his Unit so long as said sign complies with reasonable Rules and Regulations imposed by the Association and complies with all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof.

vii. Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

viii. Subject to Development Rights under this Declaration, no structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

ix. Outdoor drying of clothes, bedding, or similar items is not permitted.

x. Parking of vehicles in driveways and parking areas shall be subject to the Rules and Regulations of the Board applicable thereto.

xi. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Property, except as approved by the Board.

xii. Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within the Property except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Property so as to annoy or disturb Persons or endanger Persons or Property.

xiii. All parts of the Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

xiv. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

xv. Neither the Board nor the Association shall take or permit to be taken any Action that unlawfully discriminates against one or more Unit Owners.

C. **Employees.** No employee, customer, or patron of a Unit Owner shall be allowed either to use any of the facilities which are Common Elements of the Condominium Property or to use any of the Property owned or operated by the Association.

D. **Use of Common Elements.** The Common Elements shall be used in accordance with this Declaration and only by the Unit Owners and their agents, tenants, family Members, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to the use of the Units. However, other areas designated for a specific use shal1 be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board at some future time, affecting any part or an of said Common Elements. The Association shall have the right to allow use of portions of Common Elements to Owners of Units in other Condominiums developed by Declarant.

E. **Unrestricted Right of Transfer.** The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

F. **Leases; Short-Term Rental Program.** BAYSIDE LUXURY GARAGE CONDOMINIUMS is a "lease-restricted" Development. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate, including eviction. No Units (including any individual rooms) may be rented except as provided under the short-term rental program that will be operated by the management offices and/or designated property manager of the Development, which shall be described below. This restriction on use shall be considered a covenant running with each Unit, creating a burden on each single Unit and Unit Owner for the benefit of every other Unit and Unit Owner.

Anything to the contrary notwithstanding, the Declarant and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium Property as provided above. Further, the Association intends to maintain an on-site rental and rental management program in which the Unit Owner shall have the right, but not the obligation, to participate. The terms and conditions of the short-term rental program, including revenue sharing, management fees, and rental restrictions, shall be outlined in a separate agreement between the Unit Owner and the Declarant or the designated property manager. The Unit Owner acknowledges that participation in the short-term rental program is optional, and they may choose to occupy the Unit exclusively for personal use. However, in the event Unit Owner desires to lease their Unit, Unit Owner will be obligated to exclusively utilize the Declarant or designated property manager and shall be prohibited from utilizing other rental platforms (or personal efforts of the Unit Owner). If at any time the Unit Owner desires to participate the Unit in the short-term rental program, the Unit Owner shall be required to purchase the furniture package under paragraph (M) below.

G. **Regulations.** Reasonable regulations concerning the use of the Condominium Property may be made by the Declarant and amended from time to time by the Board of Directors of the Association or by a majority of the Members of the Association attending a regular meeting or as may be provided in the By-Laws. Copies of such regulations or amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request. Current rules and regulations are attached as Exhibit "F" and are incorporated here by this reference.

H. **No Restrictions on Mortgaging Units.** Anything construed in any of the Condominium Documents to the contrary, there shall be no restrictions on the right of a Unit Owner to mortgage his Unit.

XIII. AMENDMENT

This Declaration and the By-Laws of the Association may be amended by a vote of two-thirds (2/3rds) of the Board. However, Article XII ("Use Restrictions") of this Declaration may be amended only by the affirmative vote or agreement of Unit Owners to whom at least two thirds of the votes in the Association are allocated. Each deed, mortgage, trust deed, other evidence of obligation. or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to make, execute and record Special Amendments. Additionally, and anything else to the contrary notwithstanding, in compliance with Federal National Mortgage Association (FNMA) guidelines, amendments of a material nature must be approved by at least the Owners of sixty-seven (67%) of the Units and by Mortgagees who represent at least fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees. Where this Declaration requires approval binding upon a Mortgagee by Mortgagees, implied approval, including implied written approval, binding upon a Mortgagee may be assumed when said Mortgagee fails to

submit a response to any written proposal for an amendment within thirty (30) days after said Mortgagee receives notice of the proposal delivered by certified or registered mail, with a return receipt requested.

XIV. PURCHASE OF UNIT BY ASSOCIATION

A. **Decision.** The decision of the Association to purchase a Unit shall be made by the Board of Directors without the approval of the Members except as provided in this Article.

B. **Limitation.** If at any time the Association is already the Owner of or has agreed to purchase one or more Units, it may not purchase any additional Units without the prior written approval of Members holding seventy-five percent (75%) of the votes of those Members eligible to vote thereon, except as provided in this Article. A Member whose Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to a Unit either to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent Assessments where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of such lien if the consideration therefore does not exceed the cancellation of such lien. In any event, the Board of Directors or a designee thereof, acting on behalf of the Association, may only purchase a Unit in accordance with this Article, or as the result of a sale pursuant to the foreclosure of:

i. A lien on the Unit for unpaid taxes;

ii. A lien of a mortgage;

iii. The lien for unpaid Assessments;

iv. Any other judgment lien or lien attaching to such Unit by operation of law.

XV. NOTICE OF LIEN OR SUIT

A. **Notice of Lien.** A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his Unit, other than liens for first mortgages, taxes, and special Assessments, within five (5) days after he receives notice of the attaching of the lien.

B. **Notice of Suit.** A Unit Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his Condominium Unit with such notice to be given within five (5) days after the Unit Owner obtains knowledge thereof.

C. **Failure to Comply.** Failure to comply with this section will not affect the validity of any judicial proceeding.

XVI. RULES AND REGULATIONS

A. **Compliance.** Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium Documents and the Rules and Regulations applicable to the Condominium Property. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to an Action for damages or injunctive relief, or both, in addition to imposition of fines and other remedies provided in the Condominium Documents, or available in law or equity.

B. **Enforcement.** The Association, through the Board of Directors, is hereby empowered to enforce the Condominium Documents and all Rules and Regulations of the Association by such means as it deems necessary, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the By-Laws. In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium Documents and any Rules and Regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Unit Owner and the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of, a Special Assessment therefor as provided in this Declaration. [n addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

C. **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his Act, neglect, or carelessness or by that of any Member of his family, his lessees, their guests, invitees, employees, or agents. Such liability shall include any increase in fire and casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements. The liability for such increases in insurance rates shall equal five (5) times the first resulting increase in the annual premium rate for such insurance.

D. **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Act, the Condominium Documents, or any Rules and Regulations adopted pursuant thereto shall not constitute a waiver of the right to do so.

XVII. GENERAL PROVISIONS PERTAINING TO MORTGAGES

A. **Lender's Notices.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

i. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.

ii. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage.

iii. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

iv. Any proposed Action that requires the consent of a specified percentage of mortgage holders.

B. **Blanket Mortgages.** The entire Condominium Property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any Unit Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the Common Elements of the Condominium attributable to such Unit or Units.

XVIII. TERMINATION

The termination of the Condominium may occur in accordance with the provisions of the Act and by agreement of Unit Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Harrison County, Mississippi. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares.

XIX. COVENANT AGAINST PARTITION

There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall Declarant or any Person acquiring any interest in the Property or any part thereof seek any such partition.

XX. MISCELLANEOUS

A. **Intent.** It is the intent of the Declarant to create a Condominium pursuant to the Act. In the event that the Condominium created by this Declaration shall fail in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control, and the Condominium hereby created shall be governed in accordance with the laws of the State of Mississippi, the By-Laws, the Articles. and all other instruments and exhibits attached to or made a part of this Declaration.

B. **Covenants, Conditions and Restrictions.** All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein; and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representative, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Unit Owners and Occupants shall be subject to and shall comply with the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder.

C. **Severability.** The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, any Rules and Regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the Act, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion thereof.

D. **Notice.** All notices, demands, bills, statements or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (i) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (ii) if to the Association, the Board of Directors or the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates an address in

writing to the secretary shall be entitled to receive all notices hereunder.

E. **Governing Law and Arbitration of Disputes.** Should any dispute arise between any of the parties whose rights or duties are affected or determined by the Condominium Documents, such dispute shall be governed by the laws of the State of Mississippi, and such dispute, disagreement, or question between the parties, including any between the Association and Declarant, except a dispute concerning the filing or enforcement of a lien as provided for elsewhere in this Declaration, shall be resolved, if possible, through mediation, failing which such claims shall be submitted to and settled by conclusive binding arbitration under the Commercial Rules of the American Arbitration Association. To the extent that a party does not prevail in the arbitration, said party shall pay any and all costs and expenses associated with the arbitration, including but not limited to the arbitrator's expenses and the prevailing party's reasonable attorney's fees. The arbitrator's award shall be enforceable as a judgment in any court with jurisdiction.

All parties subject to this Declaration forego all right to take legal action thereunder except to enforce any arbitration award, which award shall be a condition precedent to any right of legal action that any party may have against the other. It shall be deemed that each party who takes title subject to the terms of this Declaration stipulates that this Development and contracts relating to same have a substantial effect on interstate commerce.

F. **Waiver.** No provisions contained in the Condominium Documents shall be deemed to have been waived by reason of any failure to enforce the same. irrespective of the number of violations or breaches thereof which may occur.

G. **Ratification.** Each Unit Owner, by reason of having acquired ownership of his Unit, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder are fair and reasonable in all material respects.

H. **Captions.** The captions used in the Condominium Documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Condominium Documents.

I. **Costs and Attorney's Fees.** In any proceeding arising because of an alleged default by a Unit Owner, the prevailing patty shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

[Signature on following page.]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration of Condominium on the day and year first above written.

GUTIERREZ, LLC, a Mississippi Limited Liability Company

By: _____
Name: _____
Title: _____

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED before me, the undersigned authority in and for the said county and state, on the _____ day of _____, 2025, with in my jurisdiction, the within named _____ who acknowledged that they are the Managing Member of GUTIERREZ, LLC a Mississippi Limited Liability Company, and that for and on behalf of said limited liability company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company to do so.

_____
NOTARY PUBLIC

My Commission Expires: _____